

103^D CONGRESS
2^D SESSION

H. R. 3939

To amend the Public Health Service Act to eliminate the incentives that lead to increased prices and utilization of clinical laboratory diagnostic testing services and other ancillary health services.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 1994

Mr. SLATTERY (for himself, Mr. McMILLAN, and Mr. PENNY) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act to eliminate the incentives that lead to increased prices and utilization of clinical laboratory diagnostic testing services and other ancillary health services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ethics in Billing Act”.

5 **SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE**
6 **ACT.**

7 (a) IN GENERAL.—The Public Health Service Act is
8 amended—

1 (1) by redesignating title XXVII (42 U.S.C.
2 300cc et seq.) as title XXVIII; and

3 (2) by inserting after title XXVI the following
4 new title:

5 **“TITLE XXVII—RESTRICTIONS**
6 **ON BILLING**

7 **“SEC. 2701. PROHIBITION.**

8 “(a) BILLING OF OTHERS FOR ANCILLARY HEALTH
9 SERVICES.—Except as provided in section 2702, it shall
10 be unlawful for any person (including any individual or
11 entity) who furnishes ancillary health services (as defined
12 in section 2705(1)) to present or cause to be presented,
13 a claim, bill, or demand for payment to any person other
14 than the patient receiving such services.

15 “(b) BILLING OF RECIPIENT OF SERVICES.—Except
16 as provided in section 2702, it shall be unlawful for any
17 physician, or the agent of any physician, to present, or
18 cause to be presented, a claim, bill, or demand for pay-
19 ment for ancillary health services to any recipient of such
20 services unless the services covered by the claim, bill, or
21 demand were furnished—

22 “(1) personally by, or under the supervision of,
23 the referring physician;

1 “(2) personally by, or under the supervision of,
2 a physician who is a member of the same group
3 practice as the referring physician; or

4 “(3) personally by individuals who are employed
5 by such physician or group practice and who are
6 personally supervised by the physician or by another
7 physician in the group practice.

8 “(c) GENERAL EXCEPTION FOR SERVICES UNDER
9 MEDICARE.—This section does not apply with respect to
10 any ancillary health services for which payment may be
11 made under title XVIII of the Social Security Act.

12 **“SEC. 2702. EXCEPTIONS.**

13 “Notwithstanding the provisions of section 2701, a
14 person who furnishes ancillary health services to an indi-
15 vidual may present, or cause to be presented, for payment
16 for actual services rendered a claim, bill, or demand to—

17 “(1) an immediate family member of the recipi-
18 ent of the services or any other person legally re-
19 sponsible for the debts or care of the recipient of the
20 services;

21 “(2) a third party payor designated by the re-
22 cipient of the services;

23 “(3) a health maintenance organization in
24 which the recipient of the services is enrolled;

1 “(4) a hospital or skilled nursing facility where
2 the recipient of the services was an inpatient or out-
3 patient at the time the services were provided;

4 “(5) an employer where the recipient of the
5 services is an employee of such employer and the
6 employer is responsible for payment for the services;

7 “(6) a governmental agency or specified agent,
8 on behalf of the recipient of the services;

9 “(7) a substance abuse program where the cli-
10 ents of such a program were the recipient of the
11 services;

12 “(8) a clinic or other health care provider that
13 has been designated (or that is operated by an orga-
14 nization that has been designated) as tax-exempt
15 pursuant to section 501(c)(3) of the Internal Reve-
16 nue Code of 1986 whose purpose is the promotion
17 of public health, if the services rendered relate to
18 testing for sexually transmitted disease, acquired im-
19 mune deficiency syndrome, pregnancy, pregnancy
20 termination, or other conditions where the Secretary
21 has determined that compliance with section 2701
22 could seriously compromise the recipient’s need for
23 confidentiality;

24 “(9) a person engaged in bona fide research
25 studies;

1 “(10) the party requesting the ancillary health
2 services where Federal, State, or local law requires
3 that the identity of the recipient be kept confidential;
4

5 “(11) another person furnishing the same ancillary health services for which payment is sought
6 (hereafter referred to in this paragraph as the ‘requesting party’) where the person presenting, or
7 causing to be presented, the claim, bill, or demand
8 for payment furnished the services at the request of
9 the requesting party, except that the requesting
10 party may not be a facility owned or operated by the
11 physician requesting the ancillary health service; and
12

13 “(12) an entity approved to receive such claims,
14 bills or demands by the Secretary in regulations.
15

16 The persons described in paragraphs (1) through (12) who
17 have received a claim, bill, or demand for payment for
18 such ancillary health services may present, or cause to be
19 presented, such claim, bill, or demand to the responsible
20 party.

21 **“SEC. 2703. SANCTIONS.**

22 “(a) PAYMENT.—No payment may be made for a
23 service that is provided in violation of section 2701.

24 “(b) COLLECTION OF AMOUNTS.—

1 “(1) LIABILITY ON COLLECTION.—If a person
2 collects any amounts that were billed in violation of
3 section 2701(a), such person shall be liable for, and
4 shall refund on a timely basis to the individual
5 whom such amounts were collected, any amounts so
6 collected.

7 “(2) COLLECTION BY PHYSICIAN.—If a physi-
8 cian collects any amounts from a recipient of serv-
9 ices, or from another person on behalf of the recipi-
10 ent of services (including a third-party payor) that
11 were billed in violation of section 2701(b), such phy-
12 sician shall be liable for, and shall refund on a time-
13 ly basis to the recipient or person, any amounts so
14 collected.

15 “(c) REPEATED CLAIMS.—Any person that presents,
16 or causes to be presented, on a repeated basis, a bill or
17 a claim that such person knows, or should have known,
18 is for a service for which payment may not be made under
19 subsection (a), or for which a refund has not been made
20 under subsection (b), shall be subject to a civil money pen-
21 alty of not more than \$5,000 for each such bill or claim.
22 The provisions of section 1128A of the Social Security Act
23 (other than the first sentence of subsection (a) and sub-
24 section (b)) shall apply to a civil money penalty assessed
25 under the previous sentence in the same manner as such

1 provisions apply to a penalty or proceeding under such
2 section 1128A(a).

3 “(d) SUSPENSION OF LABORATORY CERTIFI-
4 CATION.—If the Secretary finds, after reasonable notice
5 and opportunity for a hearing, that a laboratory which
6 holds a certificate pursuant to section 353 has violated
7 section 2701, the Secretary may suspend, revoke or limit
8 such certification in accordance with the procedures estab-
9 lished in section 353(k).

10 “(e) EXCLUSION FROM OTHER PROGRAMS.—

11 “(1) AUTHORITY.—The Secretary may exclude
12 from participation in any program under title XVIII
13 of the Social Security Act, any individual or entity
14 that the Secretary determines has violated section
15 2701 and may direct that such individual and entity
16 be excluded from participation in any State health
17 care program receiving Federal funds.

18 “(2) APPLICATION OF OTHER LAW.—The provi-
19 sions of section 1128(e) of the Social Security Act
20 shall apply to any exclusion under paragraph (1) in
21 the same manner as such provisions apply to a pro-
22 ceeding under such section 1128.

1 **“SEC. 2704. REGULATIONS.**

2 “The Secretary shall by regulation impose such other
3 requirements as may be necessary to implement the pur-
4 poses of this title.

5 **“SEC. 2705. DEFINITIONS.**

6 “As used in this title:

7 “(1) ANCILLARY HEALTH SERVICES.—The term
8 ‘ancillary health services’ means—

9 “(A) clinical laboratory services;

10 “(B) diagnostic x-ray tests and other diag-
11 nostic imaging services including CT and mag-
12 netic resonance imaging services;

13 “(C) other diagnostic tests;

14 “(D) durable medical equipment; and

15 “(E) physical therapy services.

16 “(2) GROUP PRACTICES.—The term ‘group
17 practice’ means a group of 2 or more physicians le-
18 gally organized as a partnership, professional cor-
19 poration, foundation, not-for-profit corporation, fac-
20 ulty practice plan, or similar association—

21 “(A) in which each physician who is a
22 member of the group provides substantially the
23 full range of services that the physician rou-
24 tinely provides (including medical care, con-
25 sultation, diagnosis, or treatment) through the

1 joint use of shared office space, facilities, equip-
2 ment, and personnel;

3 “(B) for which substantially all of the serv-
4 ices of the physicians who are members of the
5 group are provided through the group and are
6 billed in the name of the group and amounts so
7 received are treated as receipts of the group;

8 “(C) in which the overhead expenses of
9 and the income from the practice are distrib-
10 uted in accordance with methods previously de-
11 termined by members of the group; and

12 “(D) which meets such other standards as
13 the Secretary may impose by regulation.

14 In the case of a faculty practice plan associated with
15 a hospital with an approved medical residency train-
16 ing program in which physician members may pro-
17 vide a variety of different specialty services and pro-
18 vide professional services both within and outside the
19 group (as well as perform other tasks, such as re-
20 search), the definition of such term shall be limited
21 with respect to the services provided outside of the
22 faculty practice plan.

23 “(3) IMMEDIATE FAMILY MEMBER.—The term
24 ‘immediate family member’ shall include spouses,
25 natural and adoptive parents, natural and adoptive

1 children, natural and adopted siblings, stepparents,
2 stepchildren and stepsiblings, fathers-in-law, moth-
3 ers-in-law, brothers-in-law, sisters-in-law, sons-in-law
4 and daughters-in-law, grandparents and grand-
5 children, and such additional family members as
6 may be specified in regulations adopted by the Sec-
7 retary.

8 “(4) PHYSICIAN.—The term ‘physician’
9 means—

10 “(A) a doctor of medicine or osteopathy le-
11 gally authorized to practice medicine and per-
12 form surgery by the State in which such indi-
13 vidual performs such function or action;

14 “(B) a doctor of dental surgery or of den-
15 tal medicine who is legally authorized to prac-
16 tice dentistry in the State in which such indi-
17 vidual performs such functions;

18 “(C) a doctor of podiatric medicine;

19 “(D) a doctor of optometry; or

20 “(E) a chiropractor.

21 “(5) THIRD PARTY PAYOR.—The term ‘third
22 party payor’ means any health care insurer, includ-
23 ing any hospital services corporation, health services
24 corporation, medical expense indemnity corporation,
25 mutual insurance company, or self-insured corpora-

1 tion, that provides coverage for health or health-re-
2 lated items or service.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Sections 2701 through 2714 of the Public
5 Health Service Act (42 U.S.C. 300cc through
6 300cc–15) are redesignated as sections 2801
7 through 2814, respectively.

8 (2)(A) Sections 465(f) and 497 of such Act (42
9 U.S.C. 286(f) and 289) are amended by striking out
10 “2701” each place that such appears and inserting
11 in lieu thereof “2801”.

12 (B) Section 305(i) of such Act (42 U.S.C.
13 242c(i)) is amended by striking out “2711” each
14 place that such appears and inserting in lieu thereof
15 “2811”.

16 **SEC. 3. EFFECTIVE DATE.**

17 (a) IN GENERAL.—This Act shall become effective
18 December 31, 1994.

19 (b) REGULATIONS.—Not later than July 1, 1995, the
20 Secretary of Health and Human Services shall promulgate
21 such regulations as may be appropriate to carry out this
22 Act.

○